

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of)	Docket No. TSCA-07-2003-0020
)	
WINDING HILLS PARTNERSHIP)	
d/b/a WINDING HILLS APARTMENTS)	COMPLAINT AND NOTICE OF
Davenport, Iowa)	OPPORTUNITY FOR HEARING
)	UNDER SECTION 16(a) OF
Respondent)	THE TOXIC SUBSTANCES
)	CONTROL ACT

COMPLAINT

Preliminary Statement

This is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act, (hereinafter "TSCA"), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, found at 40 C.F.R. Part 22, a copy of which is enclosed herewith.

This Complaint and Notice of Opportunity for a Hearing ("Complaint") serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, ("Title X"), 42 U.S.C. § 4851 *et seq.*

Congress enacted Title X to protect America's children from the dangers of lead-based paint. Congress found that lead poisoning afflicts millions of American children under the age of 6, and that millions of American homes pose a danger to children due to the hazards presented by lead-based paint. Section 1018 of Title X, 42 U.S.C. § 4852d, contains provisions governing the disclosure of information concerning lead-based paint upon the sale or lease of "target housing", which Title X defines as housing constructed prior to 1978. The Disclosure Rule requires that before a purchaser or lessee is obligated under any contract to purchase or lease target housing, sellers or lessors, and their agents, are required to disclose to the purchaser or lessee certain information regarding the possible or actual presence of lead-based paint and/or lead-based paint hazards in the target housing. Additionally, purchasers must be offered an opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is Winding Hills Partnership, 1825 Winding Hill Road, Davenport, Iowa, 52807.

General Allegations

1. Winding Hills Partnership ("Respondent") is registered as a trade name with the Scott County, Iowa, Recorder's Office.
2. Respondent does business as Winding Hills Apartments.
3. For all periods of time relevant to the violations alleged in the Complaint, Respondent owned a residential apartment complex located at 1825 Winding Hill Road, Davenport, Iowa (the "Property").
4. The Property was constructed prior to 1978.
5. The Property is "target housing", as defined by 40 C.F.R. § 745.103.
6. The Property contains multiple buildings, including, but not limited to, those known as 1955 Winding Hill Road, 1925 Winding Hill Road, and 1815 Winding Hill Road.

Count I

Failure to Provide Lead Hazard Information Pamphlet Apartment 1213 Contract

The facts stated in Paragraphs 1 through 6 above are herein restated and incorporated.

7. On or about January 28, 2001, Respondent entered into a rental agreement (the "Apartment 1213 Contract") with Desiree Reid and Alison Reid for the lease of the Property, 1955 Winding Hill Road, Apartment 1213, for residential use.
8. As a result of the Apartment 1213 Contract, Respondent became a "lessor", and Desiree Reid and Alison Reid became "lessees", as those terms are defined by 40 C.F.R. § 745.103.
9. Subsequent to the Apartment 1213 Contract, Desiree Reid and Alison Reid moved into Apartment 1213 pursuant to the rental agreement.
10. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.
11. Respondent did not provide an EPA-approved lead hazard information pamphlet to Desiree Reid and Alison Reid prior to their being obligated under the Apartment 1213 Contract.

12. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Desiree Reid and Alison Reid prior to their being obligated under the Apartment 1213 Contract is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

13. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), and based on the allegations contained above, it is proposed that a civil penalty of Two Thousand Two Hundred Dollars (\$2,200) be assessed against Respondent for its failure to comply with the requirements of 40 C.F.R. § 745.107(a)(1).

Count II
Failure to Provide Lead Hazard Information Pamphlet
Apartment 906 Contract

The facts stated in Paragraphs 1 through 6 above are herein restated and incorporated.

14. On or about January 28, 2002, Respondent entered into a rental agreement (the "Apartment 906 Contract") with Becki Ogne for the lease of the Property, 1925 Winding Hill Road, Apartment 906, for residential use.

15. As a result of the Apartment 906 Contract, Respondent became a "lessor", and Becki Ogne became a "lessee", as those terms are defined by 40 C.F.R. § 745.103.

16. Subsequent to the Apartment 906 Contract, Becki Ogne moved into Apartment 906 pursuant to the rental agreement.

17. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

18. Respondent did not provide an EPA-approved lead hazard information pamphlet to Becki Ogne prior to her being obligated under the Apartment 906 Contract.

19. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Becki Ogne prior to her being obligated under the Apartment 906 Contract is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

20. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), and based on the allegations contained above, it is proposed that a civil penalty of Two Thousand Two Hundred Dollars (\$2,200) be assessed against Respondent for its failure to comply with the requirements of 40 C.F.R. § 745.107(a)(1).

Count III
Failure to Provide Lead Hazard Information Pamphlet

Apartment 606 Contract

The facts stated in Paragraphs 1 through 6 above are herein restated and incorporated.

21. On or about October 19, 2001, Respondent entered into a rental agreement (the "Apartment 606 Contract") with Linda Schulz and Roger Kadel for the lease of the Property, 1815 Winding Hill Road, Apartment 606, for residential use.
22. As a result of the Apartment 606 Contract, Respondent became a "lessor", and Linda Schulz and Roger Kadel became "lessees", as those terms are defined by 40 C.F.R. § 745.103.
23. Subsequent to the Apartment 606 Contract, Linda Schulz and Roger Kadel moved into Apartment 606 pursuant to the rental agreement.
24. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.
25. Respondent did not provide an EPA-approved lead hazard information pamphlet to Linda Schulz and Roger Kadel prior to their being obligated under the Apartment 606 Contract.
26. Respondent's failure to provide an EPA-approved lead hazard information pamphlet to Linda Schulz and Roger Kadel prior to their being obligated under the Apartment 606 Contract is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.
27. Pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1), and based on the allegations contained above, it is proposed that a civil penalty of Two Thousand Two Hundred Dollars (\$2,200) be assessed against Respondent for its failure to comply with the requirements of 40 C.F.R. § 745.107(a)(1).

Relief

TSCA § 16(a)(1), 15 U.S.C. § 2615(a)(1), provides that any person who violates Section 409 of TSCA shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. However, this maximum penalty amount is limited by Section 1018(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), which makes violations of the Disclosure Rule enforceable under TSCA § 409 and limits penalties to not more than \$10,000 per violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, Pub. L. 101-410, as amended by the Debt Collection Act of 1996, 31 U.S.C. § 3701 note, Pub. L. 104-134, EPA issued a final rule adjusting this \$10,000 figure upward by 10% to \$11,000 for violations that occur after July 28, 1997. 62 Fed. Reg. 35,037 (June 27, 1997); 40 C.F.R. Part 19.

The penalties proposed in Paragraphs 13, 20 and 27 above, which total \$6,600, are based upon the facts alleged in this Complaint and upon those factors which the Complainant must consider pursuant to Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), including the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and other such matters as justice may require in accordance with EPA's Section 1018 - Disclosure Rule Enforcement Response Policy, dated February 2000, a copy of which is enclosed herewith. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

The proposed penalty as set forth in this Complaint is based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondent establishes bonafide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty. A summary of the proposed penalty is contained in the enclosed Civil Penalty Assessment Worksheets attached hereto and incorporated herein by reference.

If Respondent does not contest the findings and assessments set forth above, payment of the total penalty - \$6,600 - may be made by certified or cashier's check payable to the "Treasurer, United States of America," and remitted to:

Mellon Bank
EPA - Region 7
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

A copy of the check must simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

Notice of Opportunity to Request a Hearing

Answer and Request for Hearing

In accordance with 5 U.S.C. § 554, Respondent has the right to request a hearing to contest any material fact contained in this Complaint above or to contest the appropriateness of the proposed penalty set forth herein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed herewith.

To avoid being found in default, which constitutes an admission of all facts alleged in this Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state: (a) the circumstances or arguments which are alleged to constitute the grounds of any defense; (b) the facts which Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested.

The denial of any material fact or the raising of any affirmative defense shall be construed as a request for hearing. Failure to deny or explain any factual allegation contained in the Complaint constitutes an admission of the allegation. Said answer shall be filed with the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101

A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Julie Murray at the address indicated below.

If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all allegations made in this Complaint and a waiver of Respondent's right to a hearing under TSCA. A Default Order may thereafter be issued by the Regional Judicial Officer and the civil penalty proposed herein shall become due and payable without further proceedings.

Informal Settlement Conference

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Julie Murray
Assistant Regional Counsel
United States Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101
Telephone (913) 551-7448
Facsimile (913) 551-7925

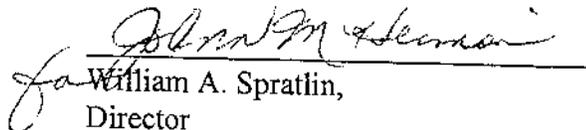
Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

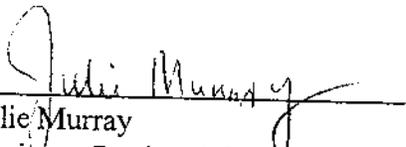
EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Judicial Officer, EPA Region 7. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

If Respondent has neither achieved a settlement by informal conference nor filed an answer within the thirty (30) day time period allowed by this Notice, the penalty proposed above may be assessed by the entry of a Default Order.

Date

11/20/02


William A. Spratlin,
Director
Air, RCRA, and Toxics Division


Julie Murray
Assistant Regional Counsel
Office of Regional Counsel

Enclosures

CIVIL PENALTY ASSESSMENT WORKSHEET

IN THE MATTER OF: WINDING HILLS PARTNERSHIP
d/b/a WINDING HILLS APARTMENTS

Count I (Minor Extent, Level 1)

(1) Gravity-Based Penalty (GBP) from Matrix	\$	\$2,200
(2) Adjustment Factors		
a. Ability to Pay/Ability to Continue in Business	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
b. History of Prior Violations	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
c. Degree of Culpability	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
(3) Other Factors as Justice May Require		
a. No Known Risk of Exposure	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
b. Attitude:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
c. SEPs:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
d. Voluntary Disclosure	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
e. Size of Business:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
f. Adjustment for Small Independent Owner/Lessor:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
(4) Final Adjusted Penalty (If no adjustments were made, enter penalty from Line 1)		\$2,200

CIVIL PENALTY ASSESSMENT WORKSHEET

IN THE MATTER OF: WINDING HILLS PARTNERSHIP
d/b/a WINDING HILLS APARTMENTS

Count II (Minor Extent, Level 1)

(1) Gravity-Based Penalty (GBP) from Matrix	\$	\$2,200
(2) Adjustment Factors		
a. Ability to Pay/Ability to Continue in Business	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
b. History of Prior Violations	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
c. Degree of Culpability	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
(3) Other Factors as Justice May Require		
a. No Known Risk of Exposure	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
b. Attitude:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
c. SEPs:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
d. Voluntary Disclosure	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
e. Size of Business:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
f. Adjustment for Small Independent Owner/Lessor:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
(4) Final Adjusted Penalty (If no adjustments were made, enter penalty from Line 1)		\$2,200

CIVIL PENALTY ASSESSMENT WORKSHEET

IN THE MATTER OF: WINDING HILLS PARTNERSHIP
d/b/a WINDING HILLS APARTMENTS

Count III (Minor Extent, Level 1)

(1) Gravity-Based Penalty (GBP) from Matrix	\$	\$2,200
(2) Adjustment Factors		
a. Ability to Pay/Ability to Continue in Business	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
b. History of Prior Violations	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
c. Degree of Culpability	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
(3) Other Factors as Justice May Require		
a. No Known Risk of Exposure	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
b. Attitude:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
c. SEPs:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
d. Voluntary Disclosure	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
e. Size of Business:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
f. Adjustment for Small Independent Owner/Lessor:	%	0
Adjusted Penalty (if no adjustment, skip to the next line)		
(4) Final Adjusted Penalty (If no adjustments were made, enter penalty from Line 1)		\$2,200
TOTAL PROPOSED PENALTY (COUNTS I, II & III)		\$6,600

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true and correct copy of the foregoing Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, Article Number: 7001 0320 0002 5013 6602, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; the Civil Penalty Assessment Worksheets; the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22; and the Section 1018 - Disclosure Rule Enforcement Response Policy to the following:

David Barker
Partner
Winding Hills Partnership
1825 Winding Hill Road
Davenport, Iowa, 52807

NOV 22 2002

Date

B.F. Robertson
Signature

B.F. ROBERTSON
Printed Name

2099 6602
ET05 2080 02E0 1002

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

NOV 22 2002

Postage	\$	Postmark Here NOV 22 2002
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (End)		

Send To: David Barker, Partner
Winding Hills Partnership
1825 Winding Hill Road
Davenport, Iowa, 52807

City, State, ZIP

PS Form 3800, January 2001 See Reverse for Instructions